

ORDINANCE NO. 4140

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ADDING SUBSECTION 16.0215C(a)(14) TO CHAPTER 2 OF DIVISION 6 OF TITLE 1, ADDING SECTION 82.02.070 TO CHAPTER 2 OF DIVISION 2 OF TITLE 8, AND AMENDING SECTION 810.01.150 ALL OF THE SAN BERNARDINO COUNTY CODE, RELATING TO MEDICAL MARIJUANA FACILITIES AND DISPENSARIES.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. The Board of Supervisors finds that:

(a) Federal Law (codified as 21 U.S.C. Sections 801 *et seq.*, entitled the "Controlled Substances Act" ("CSA")) makes it unlawful to manufacture, distribute or possess any controlled substances, including marijuana, which has, as a Schedule I drug under the CSA, "no accepted medical value in treatment;" and,

(b) Sections 11357 and 11358 of the California Health and Safety Code make it a crime, respectively, to possess and cultivate marijuana; and,

(c) At the General Election held on November 5, 1996, California voters approved Proposition 215 (codified as Health and Safety Code Section 11362.5, and titled the "Compassionate Use Act of 1996" ("CUA")), intended to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief;" and further provided that "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical

1 purposes of the patient upon the written or oral recommendation or approval of a  
2 physician;" and,

3 (d) On January 1, 2004, Senate Bill 420 (codified as Health and Safety Code  
4 Sections 11362.7 *et seq.* and titled the "Medical Marijuana Program" ("MMP")) went  
5 into effect and was enacted to clarify the scope of the CUA and to allow cities and  
6 counties to adopt and enforce regulations consistent with the CUA and MMP; and,

7 (e) The CUA and MMP, on one hand, and the CSA, on the other, create a  
8 law enforcement dilemma due to the conflict between federal and state law; and  
9 although state law purports to create a limited affirmative defense to criminal  
10 prosecution for qualifying persons who collectively gather to cultivate medical  
11 marijuana, there is no provision in state law which authorizes or protects the  
12 establishment of a medical marijuana dispensary, other storefront distribution  
13 operation, or other facility to distribute marijuana; and,

14 (f) Medical marijuana dispensaries and storefront distribution facilities have  
15 been established in cities and counties throughout the State in increasing numbers  
16 under the claim that the CUA and the MMP allows for such facilities without regard to  
17 local regulation; further, although the CUA and MMP provide for personal possession,  
18 use, and cultivation of marijuana, as well as collective cultivation, in limited  
19 circumstances, they do not authorize or legalize the sale of marijuana for profit on an  
20 individual basis or from a store-front; and,

21 (g) Medical marijuana dispensaries, storefront distribution operations, or  
22 other facilities to distribute marijuana, including collectives and cooperatives, are not  
23 permitted uses under the County Development Code (Development Code); and,

24 (h) The County has found that other jurisdictions in California that have  
25 allowed or legally permitted the establishment of medical marijuana dispensaries, other  
26 storefront distributions operations, or other facilities to distribute marijuana, have  
27 experienced an increase in crime, such as loitering, theft, burglary, robbery, homicide  
28 and sale of illegal drugs in the areas immediately surrounding such facilities; further,

1 that such facilities are being located in close proximity to residential areas, schools,  
2 churches, day care centers, and other sensitive areas; and,

3 (i) In response to concerns for the public health, welfare and safety, the  
4 Board of Supervisors enacted County Ordinance 4083 on June 23, 2009, whereby it  
5 imposed a temporary (forty-five day) moratorium on the issuance of permits for the  
6 establishment of medical marijuana dispensaries; with the moratorium subsequently  
7 extended for an additional ten months and fifteen days by Ordinance 4086 enacted on  
8 August 4, 2009, and for an additional year by Ordinance 4110 on June 8, 2010; with  
9 the second extension being the final extension allowed under California law; and,

10 (j) Because of the ongoing need for the County to adopt rules and  
11 regulations specifically applicable to the establishment and operation of medical  
12 marijuana dispensaries, other storefront distribution operations, or other facilities  
13 distributing marijuana; and because the lack of such controls over such dispensaries  
14 and facilities and inaction by the County in regulating these establishments in a manner  
15 that will protect the general public, homes and businesses adjacent to and near such  
16 businesses, and the patients or clients of such establishments, may lead to their  
17 proliferation; and,

18 (k) Based on the adverse secondary impacts experienced by other cities and  
19 counties, and the lack of any regulatory program in the County regarding the  
20 establishment and operation of medical marijuana dispensaries, other storefront  
21 distribution operations, or other facilities distributing marijuana, it is reasonable to  
22 conclude that similar negative secondary effects on the public health, safety, and  
23 welfare would occur in the County as a result of the proliferation of facilities distributing  
24 marijuana and the lack of appropriate regulations governing the establishment and  
25 operation of such facilities; and,

26 (l) The County may make and enforce within its limits all local, police,  
27 sanitary, and other ordinances and regulations not in conflict with general laws; and  
28 preemption of the County's authority will not be implied when the legislative scheme of

the law, including the MMP and CUA, either permits or recognizes local regulation; and the MMP explicitly provides that a County shall not be prevented from adopting or enforcing laws consistent with the MMP; and the CUA and MMP do not contemplate or mention in any way or fashion the creation of medical marijuana retail or distribution outlets to be permitted in a city or county.

SECTION 2. Subsection 16.0215C(a)(14) is added to Chapter 2 of Division 6 of Title 1 of the San Bernardino County Code, to read:

**16.0215C Land Use and Development Review – Code Enforcement**

(a)(14) Health facility, residential care facility for persons with chronic life-threatening illness, residential care facility for the elderly, or home health agency or hospice, all requiring state licenses (see section 810.01.150(q)(2)), registering to cultivate and/or distribute medical marijuana: Annual registration (initial registration and subsequent renewals to be completed not less than thirty days prior to state license expiration) ..... \$210.00

SECTION 3. Section 82.02.070 is added to Chapter 2 of Division 2 of Title 8 of the San Bernardino County Code, to read:

**82.02.070 Medical Marijuana Dispensaries, Registration, Outdoor Cultivation**

(a) Notwithstanding Section 82.02.030(a)(3), in no event shall a medical marijuana dispensary as defined in Section 810.01.150 be considered a permitted or conditionally permitted use in any land use zoning district. A medical marijuana dispensary is prohibited in all land use zoning districts, as those may be amended from time to time, and no permit of any type shall be issued therefor. This section shall not affect the right to possess, use or cultivate marijuana for medicinal purposes as is presently authorized or prohibited by the laws of the State of California as set forth in the Health and Safety Code, Penal Code, or other state law, or by any federal law.

1 (b) Before commencing the cultivation and/or distribution of medical  
2 marijuana, operators of those facilities listed under Section 810.01.150(q)(2) shall  
3 register with Land Use Services, and renew said registration on an annual basis. Upon  
4 said registration and each renewal thereof, the operator shall provide proof of a valid  
5 license as provided by Chapters 2, 3.01, 3.2, 8 and/or 8.5 of Division 2 of the Health  
6 and Safety Code.

7 (c) No outdoor cultivation or growing of medical marijuana shall be permitted  
8 within the unincorporated areas of San Bernardino County. Any cultivation not  
9 inconsistent with California state law, or this Code, as such laws may be amended from  
10 time to time, shall at all times occur indoors, in a secure, locked, and fully enclosed  
11 structure that includes solid walls, and a ceiling, roof or top.

12  
13 SECTION 4. Subsection 810.01.150(q) is added to Chapter 1 of Division  
14 10 of Title 8 of the San Bernardino County Code and all subsequent subsections are  
15 renumbered, to read:

16 **810.01.150 Definitions**

17 (q) **Medical Marijuana Dispensary.**

18 (1) A medical marijuana dispensary is any facility or location, whether  
19 fixed or mobile, where marijuana is cultivated, made available, and/or distributed by or  
20 to three or more persons within the following categories: a primary caregiver, a  
21 qualified patient, or a patient with an identification card, as those terms are defined in  
22 Health and Safety Code Sections 11362.5 and 11362.7 *et seq.* as such sections may  
23 be amended from time to time.

24 (2) A medical marijuana dispensary shall not include the following  
25 uses, provided that such uses may otherwise be lawfully established and operated and  
26 comply with this code and all other applicable laws, including, but not limited to, Health  
27 and Safety Code Sections 11362.5 and 11362.7 *et seq.*

28

1 (a) An in-patient "health facility" as defined by and licensed  
2 pursuant to Chapter 2 of Division 2 of the Health and Safety Code (commencing with  
3 Section 1250);

4 (b) A "residential care facility for persons with chronic life-  
5 threatening illness" as defined by and licensed pursuant to Chapter 3.01 of Division 2  
6 of the Health and Safety Code (commencing with Section 1568.01);

7 (c) A "residential care facility for the elderly" as defined by and  
8 licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code  
9 (commencing with Section 1569);

10 (d) A "home health agency" as defined by and licensed  
11 pursuant to Chapter 8 of Division 2 of the Health and Safety Code (commencing with  
12 Section 1725); and,

13 (e) A nonexempt "hospice" as defined by and licensed pursuant  
14 to Chapter 8.5 of Division 2 of the Health and Safety Code (commencing with Section  
15 1745).

16 (3) The word "marijuana" shall have the same meaning as that set  
17 forth in Health & Safety Code Section 11018. The term "medical marijuana" is  
18 marijuana used for medicinal purposes in strict accordance with Health and Safety  
19 Code Sections 11362.5 and 11362.7 *et seq.*

20 **(r) Medical Services, Hospital (see Land Use Tables).** Hospitals and  
21 similar facilities engaged primarily in providing diagnostic services, and extensive  
22 medical treatment, including surgical and other hospital service. These establishments  
23 have an organized medical staff, inpatient beds, and equipment and facilities to provide  
24 complete health care. May include on-site accessory clinics and laboratories,  
25 accessory retail uses, and on-site ambulance dispatch facilities.

26 **(s) Medical Services - Rehabilitation Center (see Land Use Tables).** A  
27 facility providing skilled nursing and/or medical care to persons recovering from injuries  
28 or dependencies.

1           **(t) Meeting Facility, Public or Private (see Land Use Tables).** A facility for  
2 public or private meetings, including community centers, civic and private auditoriums,  
3 grange halls, mortuaries, union halls, meeting halls for clubs and other membership  
4 organizations, etc. Also includes functionally related internal facilities such as kitchens,  
5 multi-purpose rooms, and storage. Does not include conference and meeting rooms  
6 accessory and incidental to another primary use that are typically used only by on-site  
7 employees and clients, and occupy less floor area on the site than the offices they  
8 support (see "Offices"). Does not include: sports or other commercial entertainment  
9 facilities (see "Theater," and "Sports and Entertainment Assembly"); or convention  
10 centers (see "Conference/Convention Facility"). Related on-site facilities including day  
11 care centers and schools are separately defined. Also see "Places of Worship."

12           **(u) Menagerie.** A private collection of three or more wild, exotic or  
13 dangerous animals that are raised, bred, trained and/or maintained without any public  
14 display or exhibition on the site.

15           **(v) Mined Lands.** Includes the surface, subsurface, and groundwater of an  
16 area where surface mining operations will be, are being, or have been conducted. This  
17 includes private ways and roads appurtenant to any land excavations, workings, mining  
18 waste, and areas where structures, facilities, equipment, machines, tools or other  
19 materials or property that result from, or are used in, surface mining operations are  
20 located. See also "Surface Mining Operations."

21           **(w) Mineral Resources.** A collective term for all mineral deposits of a  
22 particular kind, or for mineral deposits in general.

23           **(x) Minerals.** See "Surface Mining Operations."

24           **(y) Minimum Lot Size.** See "Lot Size, Minimum."

25           **(z) Mining and Reclamation Lead Agency.** See "Lead Agency."

26           **(aa) Mining and Reclamation Operator.** See "Surface Mining Operations."

27           **(bb) Mining and Reclamation Plan.** A plan required by the County for all  
28 surface mining operations. The plan requires measures to be taken that provide for

1 reclamation of mined lands to a usable condition that is readily adaptable for alternative  
2 land use and creates no danger to public health or safety.

3 (cc) **Mining Hazardous, Excavation.** See "Hazardous Excavation."

4 (dd) **Mining Reclamation.** See "Surface Mining Operations."

5 (ee) **Mining Waste.** Includes the residual of soil, rock, mineral, liquid,  
6 vegetation, equipment, machines, tools, or other materials or property directly resulting  
7 from, or displaced by, surface mining operations.

8 (ff) **Mini-Storage.** See "Storage, Personal."

9 (gg) **Minor Grading.** See "Grading."

10 (hh) **Minor Event.** See "Special Event, Temporary."

11 (ii) **Minor Maintenance/Repair.** See "Vehicle Services."

12 (jj) **Minor Subdivision Plot Plan.** Any application plot plan requesting the  
13 subdivision of any parcel or parcels of land shown as a unit or contiguous units under  
14 one or a common ownership, and that is proposed for subdivision for the purpose of  
15 sale, lease, financing, or other conveyance, including gift, either immediate or in the  
16 future, into two, three or four lots, parts or parcels and a remainder parcel. For the  
17 purposes of this definition, a Minor Subdivision Plot Plan shall also mean a Tentative  
18 Parcel Map.

19 (kk) **Mitigation Measures.** Necessary steps taken to lessen potential impacts  
20 of development or actions on the environment.

21 (ll) **Mixed Land Use.** The unspecified mixture of compatible land uses within  
22 one building or within a section or sections of a community.

23 (mm) **Mobile Home, Boat, or RV Sales (see Land Use Tables).** Retail  
24 establishments selling both mobile home dwelling units, and/or various vehicles and  
25 watercraft for recreational uses. Includes the sales of boats, campers and camper  
26 shells, jet skis, mobile homes, motor homes, and travel trailers.

27 (nn) **Mobile Home, Dependent.** A mobile home or travel trailer coach not  
28 equipped with a toilet for sewage disposal.



1           **(oo) Mobile Home** A structure that was constructed prior to June 15, 1976, is  
2 transportable in one or more sections, which in the traveling mode, is eight body feet or  
3 more in width, or 40 feet or more in length, or, when erected on site, is 320 or more  
4 square feet, and designed to be used as a dwelling unit with or without a permanent  
5 foundation when connected to utilities, and includes the plumbing, heating, air  
6 conditioning and electrical systems contained therein; except that such term will  
7 include any structure which meets all the requirements of this paragraph and complies  
8 with the state standards in effect at the time of construction. "Mobile home does not  
9 include commercial modulars, as defined in Section 18001.8, factory-built housing, as  
10 defined in Section 19971, a manufactured home, as defined in Section 18007, or a  
11 recreational vehicle, as defined in Section 18010 of the California Health and Safety  
12 Code (CHSC).

13           **(pp) Mobile Home Park/manufactured home land-lease community (see**  
14 **Land Use Tables).** An area or tract of land designed as a single unit where spaces for  
15 two or more mobile homes used for human habitation are rented or leased on a  
16 monthly or greater basis, or owned separately.

17           **(qq) Mobile Home Park Lot.** A portion of a mobile home park designated or  
18 used for the occupancy of one trailer coach or camping party.

19           **(rr) Mobile Home, Self-Contained.** A mobile home or trailer equipped with a  
20 toilet, water storage tank for potable water and a sewage holding tank.

21           **(ss) Mobile Recycling Unit.** See "Recycling Facility."

22           **(tt) Modular unit (Factory-built housing).** A residential building, dwelling  
23 unit, or an individual dwelling room or combination of rooms thereof, or building  
24 component, assembly, or system manufactured in such a manner that all concealed  
25 parts or processes of manufacture cannot be inspected before installation at the  
26 building site without disassembly, damage, or destruction of the part, including units  
27 designed for use as a part of an institution for resident or patient care, that is either  
28 wholly manufactured or is in substantial part manufactured at an offsite location to be

1 wholly or partially assembled onsite in accordance with building standards published in  
2 the California Building Standards Code and other regulations adopted by the  
3 commission pursuant to section 19990. Factory-built housing does not include a mobile  
4 home, as defined in Section 18008, a recreational vehicle, as defined in Section  
5 18010.5, or a commercial modular, as defined in Section 18012.5 of the California  
6 Health and Safety Code (CHSC).

7       **(uu) Monopole.** See "Wireless Telecommunication Facility."

8       **(vv) Monument Sign.** See "Sign."

9       **(ww) Moratorium.** See "Development Moratorium."

10       **(xx) Motel.** A building or group of two or more detached, semi detached or  
11 attached buildings containing guest rooms designed, used and intended, wholly or in  
12 part, for the accommodation of transients for compensation on a daily or weekly basis.  
13 These establishments provide lodging and parking for automobile travelers and the  
14 rooms are usually accessible from outdoor parking area. These establishments may  
15 include guest rooms with food preparation areas (kitchenettes) and are designed,  
16 intended or used primarily for the accommodation of automobile travelers. Included are  
17 lodging establishments designated as cabins, motor courts, and similar designations;  
18 not including those facilities defined in social care facilities or any jail, hospital, asylum,  
19 sanitarium, orphanage, prison or other building in which human beings are housed and  
20 detained under legal restraint.

21       **(yy) Motor Vehicle.** A self-propelled device by which persons or property may  
22 be moved upon a highway, excepting a device moved by human power or used  
23 exclusively upon stationary rails or tracks.

24       **(zz) Motor Vehicle Dismantling Facility (see Land Use Tables).** Any  
25 premises used for the dismantling of wrecking of vehicles required to be registered  
26 under the Vehicle Code of the State of California. Activities may include the buying,  
27 selling or dealing in vehicles, their integral parts, or component materials thereof, and  
28

1 the storage, sale or dumping of dismantled, partially dismantled, wrecked or  
2 inoperative vehicles. See also "Recycling Facilities – Scrap and Dismantling Yard."

3 **(aaa) Motor Vehicle Storage/Impound Facility (see Land Use Tables).** Any  
4 lot, lot area, or parcel of land used, designed, or maintained for the specific purpose of  
5 storing, impounding, or keeping motor vehicles, but not including dismantling or  
6 wrecking activities.

7 **(bbb) Mountain Major Highway.** See "Road System."

8 **(ccc) Mountain Region.** Areas within the following described boundary:  
9 Beginning at the intersection of the boundary line between San Bernardino and Los  
10 Angeles Counties and the north line of Section 31 Township 4 North, Range 7 West,  
11 SBB&M, thence generally easterly and southerly along the National Forest boundary to  
12 its intersection with the boundary line between San Bernardino and Riverside Counties;  
13 thence westerly along the County line to the southwest corner of Township 1 South,  
14 Range 1 East; thence generally northerly and westerly following the National Forest  
15 boundary to the intersection of north boundary of Section 24, Township 1 North, Range  
16 8 West, SBB&M and the boundary line between San Bernardino and Los Angeles  
17 Counties; thence northerly along the County line to the point of beginning.

18 **(ddd) Mountain Secondary Highway.** See "Road System."

19 **(eee) Mudslide.** The flow of mud and debris in a downslope direction due to  
20 slope failure, caused by poor structural and water retention properties of the soil. They  
21 are generally experienced after heavy precipitation, fast snowpack melt, an earthquake  
22 or any combination thereof.

23 **(fff) Multi-Family Residential Projects.** Development project in which two or  
24 more attached or detached units are located, including apartments or condominiums.

25 **(ggg) Multiple Dwelling Unit (see Land Use Tables).** A multiple dwelling unit  
26 is a series or combination of dwelling units, either attached or detached, designed to  
27 house more than one family with individual, shared or no kitchen privileges (e.g.  
28

apartments, condominiums, boarding houses, residential hotels). See also "Dwelling, Multiple Family."

**(hhh) "Multi-unit manufactured housing"** Pursuant to California Health and Safety Code (CHSC) Section 18008.7, multi-unit manufactured housing means either of the following:

(1) A structure transportable under permit in one or more sections designed and equipped to contain not more than two dwelling units, a dormitory, or an efficiency unit as defined in Section 17958.1, to be used with a support system pursuant to Section 18613 or a foundation system pursuant to Section 18551.

(2) A structure transportable under permit in one or more sections, designed to be used with a foundation system for either of the following purposes:

(A) Three or more dwelling units, as defined in Section 18003.3.

(B) A residential hotel, as defined by paragraph (1) of subdivision (b) of Section 50519.

"Multi-dwelling unit manufactured housing" shall be constructed in compliance with all applicable department regulations. The egress and fire separation requirements of Title 24 of the California Code of Regulations (CCR) applicable to dormitories, hotels, apartment houses, and structures that contain two dwelling units shall also be applicable to all multi-dwelling manufactured housing constructed for those purposes. The accessibility and adaptability requirements of Title 24 of the CCR applicable to dormitories, hotels and apartment homes shall also be applicable to multi-dwelling unit manufactured housing containing three or more dwelling units.

Notwithstanding any other provision of law, all provisions of law that apply to manufactured homes shall apply to equally to multi-dwelling unit manufactured housing. For purposes of this section:

(1) "Dormitory" means a room or rooms inhabited for the purposes of temporary residence by two or more persons

1 (2) "Efficiency unit" has the same meaning as defined in Section  
2 17958.1.

3 (iii) **Multi-use Center.** An area of service, retail or publicly oriented facilities  
4 that are centrally located along collector streets or major arterials and serve the local  
5 residents.

6 (jjj) **Museum.** See "Library, Museum, Art Gallery, Outdoor Exhibit."  
7

8 SECTION 5. The Board declares that it would have adopted this  
9 Ordinance and each section, subsection, sentence, clause, phrase, or portion of it  
10 irrespective of the fact that any one or more sections, subsections, clauses, phrases or  
11 portions of it be declared invalid or unconstitutional. If for any reason any portion of  
12 this Ordinance is declared invalid or unconstitutional, then all other provisions of it shall  
13 remain valid and enforceable.  
14

15 SECTION 6. The Board finds that this Ordinance is not subject to  
16 environmental review under the California Environmental Quality Act (CEQA) pursuant  
17 to Title 14 of the California Code of Regulations Section 15060(c)(2) (the activity will  
18 not result in a direct or reasonably foreseeable indirect physical change in the  
19 environment) and Section 15060(c)(3) (the activity is not a project as defined in Section  
20 15378) because it has no potential for resulting in physical change of the environment,  
21 directly or indirectly.  
22

23 SECTION 7. This ordinance shall take effect thirty (30) days from the  
24 date of adoption.  
25

26   
27 JOSIE GONZALES, Chair  
28 Board of Supervisors

1 SIGNED AND CERTIFIED THAT A COPY OF THIS  
2 DOCUMENT HAS BEEN DELIVERED TO THE  
3 CHAIR OF THE BOARD

4 LAURA H. WELCH,  
5 Clerk of the Board of Supervisors  
6 of the County of San Bernardino

7 STATE OF CALIFORNIA )  
8 ) ss.  
9 COUNTY OF SAN BERNARDINO )

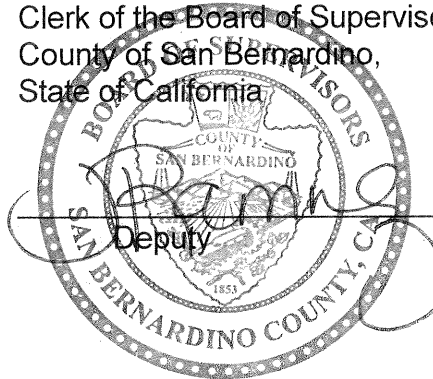
10 I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San Bernardino,  
11 State of California, hereby certify that at a regular meeting of the Board of Supervisors of  
12 said County and State, held on the 5th day of April, 2011 at which  
13 meeting were present Supervisors: \_\_\_\_\_

14 Mitzelfelt, Rutherford, Derry, Ovitt, Gonzales  
15 and the Clerk, the foregoing Ordinance was passed and adopted by the following vote, to  
16 wit:

17 AYES: Mitzelfelt, Rutherford, Derry, Ovitt, Gonzales  
18 NOES: None  
19 ABSENT: None

20 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal  
21 of the Board of Supervisors this 5th day of April, 2011.

22 LAURA H. WELCH,  
23 Clerk of the Board of Supervisors of the  
24 County of San Bernardino,  
25 State of California



26 Approved as to Form:  
27 JEAN-RENE BASLE,  
28 County Counsel

By: Kenneth C. Hardy  
KENNETH C. HARDY  
Deputy County Counsel

Date: 5/4/11